

Date: February 26, 2023

Respectfully Submitted,

/s/ James D. Sanford

JAMES D. SANFORD

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CERTIFICATE OF SERVICE

I certify that on February 26, 2024, a true and correct copy of the foregoing document was served upon all persons who have requested notice and service of pleadings in this case via the Court's ECF system.

KERRI PHILLIPS
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6010 W. Spring Creek Parkway
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Fax: (940) 400-0089
Email: kerri@KDphillipslaw.com

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/s/ James D. Sanford
JAMES D. SANFORD

From: Kerri Phillips <Kerri@KDphillipslaw.com>
Sent: Wednesday, January 3, 2024 5:51 PM
To: Jeff Bartos
Cc: Charlette Matts; James Sanford
Subject: RE: Ross / Vargas - Confidentiality

Thanks, I'll need some time to review and get back to you.

Thank you,



Kerri Phillips
KD Phillips Law Firm, PLLC
Phone: 972-327-5800 ext. 1001
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From: Jeff Bartos <jbartos@geclaw.com>
Sent: Wednesday, January 3, 2024 4:29 PM
To: Kerri Phillips <Kerri@KDphillipslaw.com>
Cc: Charlette Matts <cmatts@apfa.org>; James Sanford <jim@gillespiesanford.com>
Subject: Ross / Vargas - Confidentiality

Kerri,

Following up on last week's hearing, attached please find a draft Confidentiality Order which I believe reflects the discussion and agreement in court regarding confidentiality of discovery and depositions going forward.

The attached is a revision of the draft I sent earlier in the case, modified to reflect what we discussed in court.

This draft is written for the Ross case, and once we have reached agreement, can be modified for Vargas.

Please let me know if you have any questions, revisions, or wish to discuss.

Best regards,

Jeff

Jeffrey A Bartos

Guerrieri Bartos & Roma PC

1900 M Street, NW

Suite 700

Washington, DC 20036

202-624-7400

www.geclaw.com

From: Kerri Phillips <Kerri@KDphillipslaw.com>
Sent: Tuesday, February 13, 2024 2:57 PM
To: Jeff Bartos; Jim Sanford; Charlette Matts
Cc: Adam Phillips; Stephanie Lewis; John Grunert
Subject: RE: Response to Ms. Phillips' February 12, 2024 email requesting the Court's advice

1. Your language is confusing here. **I agree to what Judge Cureton proposed, so I think we agree.**

As for the rest I cannot say until I speak to my clients, but I'd appreciate if you would advise on when you will be producing the documents.

Thank you,



Kerri Phillips
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From: Jeff Bartos <jbartos@geclaw.com> 1.
Sent: Tuesday, February 13, 2024 1:47 PM
To: Kerri Phillips <Kerri@KDphillipslaw.com>; Jim Sanford <jim@gillespiesanford.com>; Charlette Matts <cmatts@apfa.org>
Cc: Adam Phillips <Adam@KDphillipslaw.com>; Stephanie Lewis <Stephanie@KDphillipslaw.com>; John Grunert <jgrunert@geclaw.com>
Subject: Re: Response to Ms. Phillips' February 12, 2024 email requesting the Court's advice

Kerri,

My apologies again for the delay; we only now reached a sufficient break in arbitration.

Here is APFA's position on what I think are the outstanding issues:

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1. We will agree to the non-confidentiality agreement. If you confirm your agreement without it being conditioned on some other issue, we are ready to produce all of the remaining documents which would be covered by that agreement.

2. We will not agree to abandon any motion for sanctions based on the Ross and Vargas depositions.
3. Regarding the sealing of summary judgment, we would agree to a motion to seal the medical records, as well to permit as the redaction in affidavits of discussion of specific terms. If there is personally identifying information in any of the financial documents, we would agree to suitable redaction as well.
4. Regarding your motions for sanctions, I believe Judge Means has ruled it is not to be filed under seal absent an order. We would agree to your withdrawal of those motions, but otherwise we intend to file oppositions within the allotted time.

If you can let me know in particular about the confidentiality agreement, we will proceed on that basis, even if sealing and sanctions remain unresolved.

Thank you,

Jeff

From: Kerri Phillips <Kerri@KDphillipslaw.com>

Sent: Monday, February 12, 2024 6:34 PM

To: Jeff Bartos <jbartos@geclaw.com>; Jim Sanford <jim@gillespiesanford.com>; Charlette Matts <cmatts@apfa.org>

Cc: Adam Phillips <Adam@KDphillipslaw.com>; Stephanie Lewis <Stephanie@KDphillipslaw.com>

Subject: RE: Response to Ms. Phillips' February 12, 2024 email requesting the Court's advice

I was preparing to seal the entire pleading and appendix as of now.

In a gesture of good faith, I will not move to open the motion for sanctions either, and will do my best to continue to safeguard it.

If you'd prefer I file a motion on it, I will. However I'd prefer we reach an agreement, so I may withdraw it.

I'm open to discussing these issues, Jeff, as always, my door is open.

Kerri



Kerri Phillips

KD Phillips Law Firm, PLLC

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From: Jeff Bartos <jbartos@geclaw.com>

Sent: Monday, February 12, 2024 5:28 PM

To: Kerri Phillips <Kerri@KDphillipslaw.com>; Jim Sanford <jim@gillespiesanford.com>; Charlette Matts <cmatts@apfa.org>

Cc: Adam Phillips <Adam@KDphillipslaw.com>; Stephanie Lewis <Stephanie@KDphillipslaw.com>

Subject: Re: Response to Ms. Phillips' February 12, 2024 email requesting the Court's advice

Thank you, Kerri. I am preparing for an arbitration with another client which starts tomorrow. I hope to have a full response to you by tomorrow afternoon.

With respect to your anticipated motion to seal, can you let me know if you are considering moving to seal the entire filing, or some particular parts? If the former, we would not consent, for the reasons set forth in our pending motion. If the latter, can you let me know which appendix pages or portions of the brief?

Meanwhile I'll review the Court's email, confer with APFA, and follow up with you by some point tomorrow.

Thank you,

Jeff

From: Kerri Phillips <Kerri@KDphillipslaw.com>

Sent: Monday, February 12, 2024 6:05 PM

To: Jeff Bartos <jbartos@geclaw.com>; Jim Sanford <jim@gillespiesanford.com>; Charlette Matts <cmatts@apfa.org>

Cc: Adam Phillips <Adam@KDphillipslaw.com>; Stephanie Lewis <Stephanie@KDphillipslaw.com>

Subject: FW: Response to Ms. Phillips' February 12, 2024 email requesting the Court's advice

Jeff,

In light of the courts direction below, I will take this opportunity to confer on a motion to seal and file Plaintiff's Partial Motion for Summary Judgment. If you agree to honor the court's language below and submit the outstanding discovery, we will agree to withdraw the pending motion for sanctions.

Please advise when you have a moment.

Thank you,



Kerri Phillips

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From: John Gillett <John.Gillett@txnd.uscourts.gov>

Sent: Monday, February 12, 2024 3:52 PM

To: Kerri Phillips <Kerri@KDphillipslaw.com>; Jeff Bartos <jbartos@geclaw.com>; jim@gillespiesanford.com; Adam Phillips <Adam@KDphillipslaw.com>; Charlette Broderick <CBroderick@apfa.org>

Cc: Jeffrey Cureton <Judge.Cureton@txnd.uscourts.gov>

Subject: Response to Ms. Phillips' February 12, 2024 email requesting the Court's advice

Good Afternoon,

The Court is in receipt of Ms. Phillips' email and the attached email chain. I spoke with Judge Cureton regarding the issues, and he asked that I send the following:

As a preliminary matter, unless both sides agree that it is necessary to assist in the resolution of the issue, it is inappropriate to share counsels' email or phone discussions with the Court. The Court is aware of the exceptional hostility that has arisen between the parties and parties' counsel and does not wish to be entangled in these matters any more than is necessary or appropriate. The Court has previously indicated to the parties that it does not appreciate this gamesmanship and hereby puts the parties on notice that it will not be tolerated further.

Additionally, the Court wishes to clear up a misunderstanding that has clearly arisen. During the December 26, 2023 hearing, in response to the parties stating that they are agreeable to deposition transcripts being confidential until the filing of summary judgment motions, the Court stated that the parties may be able to file certain documents under seal. In order to clear up any confusion, the Court was not permitting the parties to file things under seal as a matter of course. Rather, the Court was reminding the parties that it is permissible to seek leave of court to file documents under seal. The principles guiding the appropriateness of filing under seal can be found in *June Medical Services v. Phillips*, 22 F.4th 512 (5th Cir. 2022)—which the Court previously sent to the parties. A review of the docket sheet shows that this may have already been an issue as it appears that Judge Means struck a motion for sanctions in both cases, as they were inappropriately filed under seal without leave of court.

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Finally, in light of the Court's exceptionally busy schedule, and the amount of time that it has already devoted to discovery issues in this case, the Court found it prudent to attempt and provide assistance through this email. Because there is no motion before the Court, the following is a recommendation. Having reviewed the parties' proposed language, the Court believes that the following language is an appropriate and fair resolution regarding this dispute:

Interim Confidentiality Agreement

1. In addition to any previously produced documents that have been deemed confidential, any documents produced by any party after December 26, 2023, will be treated as confidential and not disclosed outside of this litigation. They may be shown to a non-party consultant or witness only if that individual agrees in writing to maintain confidentiality and is not allowed to retain a document covered by this agreement.
2. Documents covered by paragraph 1 shall be labeled "Confidential" or "Confidential - Covered by Protective Order."
3. At all times throughout this litigation, any provision of this or subsequent Confidentiality Agreements shall be read as to comply with Federal, State, and local rules of the Northern District of Texas Federal Courts. Any provision of this agreement that conflicts with the Federal, State, and local rules of the Northern District of Texas Federal Courts, APFA Constitution and/or APFA Policy shall have no force or effect.

Sincerely,
John Gillett
Law Clerk for the Honorable Jeffrey L. Cureton
(817)-850-6691



From: John Grunert
Sent: Tuesday, February 13, 2024 6:26 PM
To: kerri@kdphillipslaw.com; Jeff Bartos; Charlette Broderick
Subject: APFA Document Production

Kerri

The link below to the shared Dropbox account contains additional document productions, including the material addressed in Magistrate Judge Jeffrey Cureton's December 26, 2023 Order. These productions are covered by the Parties' Confidentiality Agreement and are identified as such. The password to access the

Dropbox is [REDACTED]. The additional document productions are:

- APFA VII. 3498-6079 (3544-3547 are deliberately omitted)
- APFA's Privilege Log Updated February 13, 2024

[https://www.dropbox.com/\[REDACTED\]](https://www.dropbox.com/[REDACTED])

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